IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

And
THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 15806 of 2004

Between:

P.Pandu Ranga Rao, S/o.P.Sambaiah,
Municipal Corporation of Visakhapatnam.

..... PETITIONER

AND

1 Mohd. Imtiaz Ahmed, s/o.Mohd. Osman,
West Circle, Public Health Department, Hyderabad.
2 The Engineer-in-Chief, Public Health, Kashana A.C.Guards,
Hyderabad.
3 The State of A.P.rep.by its prl.Secretary to Govt., Municipal Administration & Urban Development Dept.,
Secretariat, Hyderabad.
4 R.Dhan Singh, S/o.R.Shakru,
P.H. & M.E., Municipal Corporation of Hyderabad.

5. N. Durga Prasad s/o N. Pydithalli, Superintending Engineer,

Municipal Corporation, Visakhapatnam.

(R.5 is impleaded as per Court orders dated 16-09-2004 in W.P.M.P.No.21018 of 2004).

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more particularly in the nature of writ of order: To call for the records connected with A.P.Administrative Tribunal MA No.2706 of 2004 in O.A.No.3623 of 2004 dt.31-8-2004 and quash the same or issue any other appropriate writ, order or direction as this Hon'ble court may deem fit in the circumstances of the case.

Counsel for the Petitioner: MR.P.BALA KRISHNA MURTHY

Counsel for the Respondent No.1 & 5: Mr. J.R. MANOHAR RAO

Counsel for the Respondent Nos.2 & 3: GP FOR SERVICES-I.

Counsel for the Respondent No.4: --

The Court, at the stage of admission, made the following:

(ORAL ORDER: Per: The Hon'ble Mr. Justice Goda Raghuram)

Heard Sri P. Bala Krishna Murthy, learned counsel for the petitioner, the learned Government Pleader and Sri J. R. Manohar Rao, learned counsel for the 1st respondent-Applicant in O.A.No. 3623 of 2004.

The petitioner herein was given an incharge position to function as Chief Engineer (Public Health & Municipal Engineering Department) (for short 'P.H. & M.E. Department') "on his own pay" in the vacancy in the Municipal Corporation, Visakhapatnam that had arisen on account of the retirement of the regular incumbent of the post. The petitioner had been promoted as Superintending Engineer in April, 2004.

FACTS IN BRIEF:-

The 1st respondent herein filed O.A.No. 3623 of 2004 challenging the implementation of Rule of Reservation to the post of Chief Engineer in P.H. & M.E. Department on the basis of the principal contention that as the number of cadre posts of Chief Engineers in the P.H. & M.E. Department is only five, the rule of reservation i.e., Rule 22 of General Rules, would not apply, as the rule of reservation is applicable only where the posts in a cadre are more than five. The 1st respondent-applicant also urged a grievance before the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'Tribunal') as regards the incharge placement of the writ petitioner as Chief Engineer, Municipal Corporation, Vishakapatnam contending

that the writ petitioner being junior to him, was ineligible for preferential consideration to the post of Chief Engineer, particularly as the rule of reservation does not apply to the post of Chief Engineer in the P.H. & M.E. Department.

The Tribunal appears to have called upon the State Government to furnish information regarding the cadre strength of Chief Engineers in P.H & M.E. Department. Despite a number of adjournments, the State Government failed to furnish the requisitioned information to the Tribunal. On record in the O.A., two communications of the Engineer in Chief of P.H. & M.E. Department to the effect that only five (5) posts of Chief Engineers exist in the department were available. On this material and in the absence of any other information furnished by the State, the Tribunal *prima facie* concluded that the rule of reservation has no application and, therefore, the writ petitioner was not eligible for preferential consideration for appointment as Chief Engineer, P.H & M.E. Department. Accordingly, the Tribunal suspended the incharge appointment of the petitioner ordered in G.O.Rt.No. 904 Municipal Administration & Urban Development Department dated 27-08-2004. It is this order of the Tribunal dated 31-08-2004 in M.A.No. 2706 of 2004 in O.A.No. 3623 of 2004 that is assailed in this writ petition.

The writ petitioner and the official respondents contend in unision that the cadre strength of Chief Engineers in the P.H & M.E. Department is six (6) including one post of Director (Personnel) in the Hyderabad Metro Water Supply and Sewerage Board (for short 'the HMWSSB').

The learned counsel for the 1st respondent asserts to the contra that the post of Director (Personnel), HMWSSB could not legitimately be considered as a constituent post in the establishment of the P.H. & M.E. Department, as the Director (Personnel), HMWSSB is a post constituted in the service of the HMWSSB, a statutory corporation having an independent and distinct legal existence.

An order of the State Government in G.O.Rt.No.946-MA (Municipal Administration & Urban Development) Department dated 03-09-2004 has been placed for the consideration of this court wherein the State Government had determined that the post of Director (Personnel) HMWSSB is within the cadre strength of Chief Engineers in the P.H. & M.E. Department, to support the State's plea that the cadre strength is six (6).

The learned counsel for the 1st respondent strenuously contends that such a declaration by the State Government is incompetent, as the State Government could not declare a post in the establishment of a Statutory Corporation as a post in the P.H. & M.E. Department, forming part of the civil service of the State.

The above adversarial positions are more appropriately considered at the hearing of the O.A., by the Tribunal. For the nonce, what is assailed in this writ petition is merely the order of the Tribunal interdicting the order of the State Government placing the petitioner as incharge Chief Engineer of the Municipal Corporation, Vishakapatnam.

Incharge arrangements to fill a transient vacancy in a public service are a purely local arrangements to meet the exigencies of administration, pending the regular filling up of a post by the normal methods of recruitment whether by promotion or otherwise. As normally there is an inevitable time lag occasioned by the necessity of constituting a Departmental Promotions Committee and as public interest necessitates that a vacancy, particularly in the cadre of a Chief Engineer, should not remain unfilled, incharge arrangements are resorted to by the public employer. The incharge appointment to a public post creates no scintilla of a right or legitimate expectation for regular appointment to the post to which such an incharge arrangement is made. It is also not necessary, in the absence of any compelling legal architecture governing such situations, that the senior most person in the feeder category should be appointed to such an incharge arrangement. The appointment of the writ petitioner as incharge Chief Engineer, Municipal Corporation, Vishakapatnam inheres no right in him, for regular appointment to the post, nor does it therefore prejudice the 1st respondent herein. As and when regular appointment is made to the post of Chief Engineer, the claims of all eligible persons shall have to be considered and the claims of the petitioner and others eligible will be so considered in accordance with the operative rules on the issue. Whether the rule of reservation is applicable for the purpose; whether the cadre strength of Chief Engineers in the P.E. & M.E. Department is six (6) and whether the post of Director (Personnel) in HMWSSB could legitimately be considered as a post in the cadre of Chief Engineers in the P.E. & M.E. Department are all issues, which fall for consideration before the Tribunal in O.A.No.3623 of 2004.

One of the apprehensions of the 1st respondent is that as incharge arrangements

are in reality of an infinite duration in the State, the incharge appointment of the petitioner (which was interdicted by the Tribunal) might continue during the service tenure of the petitioner. In respect of this grievance, we called upon the State Government to furnish information as to within what time frame the process of regular appointment to the vacancy of Chief Engineer in the P.E. & M.E. Department would be initiated and concluded. The learned Government Pleader has placed before this Court a letter Memo No. 12194/C1/2004-6 dated 15-09-2004 of Municipal Administration & Urban Development Department addressed to him, wherein the State Government has committed to convene the Departmental Promotions Committee within six (6) weeks for filling up the vacancies of Chief Engineers in the P.H. & M.E. Department during the panel year 2004-05 as per rules in force. In view of this commitment of the State Government, as contained in the Memo dated 15-09-2004, the apprehension of the 1st respondent is devoid of substance. The State Government is directed to finalise the selection and make regular appointment to the vacant posts of Chief Engineer in the P.H. & M.E. Department within a period of ten (10) weeks without demur.

As the incharge appointment of the writ petitioner *per se* creates no right or entitlement in him that prejudicially affects any legal interest of the 1st respondent, we are inclined to hold that the order of the Tribunal dated 31-08-2004 suspending the operation of the proceedings in G.O.Rt.No.904 Municipal Administration & Urban Development Department dated 27-08-2004 is in error. The order impugned is accordingly set aside.

Nothing stated herein shall be construed as an expression by this court on the merits of the respective contentions as regards the cadre strength of the post of Chief Engineer in the P.H. & M.E. Department or the applicability of rule of reservation for appointment to these post of Chief Engineers.

We are informed by all the learned counsel concerned, who are also appearing in the O.A.No.3623 of 2004, that the pleadings are complete in the O.A. Having regard to the issues involved and the fact that the cadre strength in the post Chief Engineers in the P.E. & M.E. Department is the disputatious area, which has also a bearing on the applicability or otherwise of the rule of reservation to the post of Chief Engineers in the Department, we consider it appropriate to request the Tribunal to

hear and dispose of O.A.No. 3623 of 2004 expeditiously, preferably within a period of three (3) months from today.

The writ petition is allowed as above. There shall be no order as to costs.

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J. CHELAMESWAR, J

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GODA RAGHURAM, J

Dt. 16-09-2004

Pvks/*

Nb: Furnish c.c. tomorrow.

B/o

Pvks/*

The Rule has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the 16th day of September, 2004.

To

1. The Engineer-in-Chief, Public Health, Kashana A.C.Guards, Hyderabad.
2. The Principal Secretary to Government, Municipal Administration & Urban Development Department, State of A.P. Secretariat, Hyderabad.

3.2CCs to the Government Pleader for Service-I, A.P. High Court Buildings, Hyderabad (OPUC).

4.2CD copies

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